



DEPARTMENT OF THE ARMY
HEADQUARTERS 4TH INFANTRY DIVISION (MECHANIZED)
FORT HOOD, TX 76544-5000

REPLY TO
ATTENTION OF:

AFYB-CG

13 September 2004

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Command Policy Memorandum SJA-01 – Legal Issues

1. Unlawful Command Influence.

a. The military justice system maintains law, order, and discipline and reinforces soldiers' faith in the Army. The fair and efficient administration of military justice requires commanders, witnesses, and all involved in the case to act honestly, independently, and free of unlawful command influence. Remember, it is often not what you said, but what others thought you said that raises the specter of unlawful command influence. Leaders must not offer opinions as to guilt prior to trial. Moreover, leaders should ensure that their words and actions do not intimidate or discourage witnesses from testifying or influence their testimony. Prevent even the appearance of unlawful command influence by avoiding statements that could be interpreted as an inflexible attitude on the disposition of certain offenses. Each commander must exercise independent discretion in military justice matters and each military justice action must be considered on a case-by-case basis.

b. Public Affairs articles, policy statements, and directives on military justice matters should be closely coordinated with the Office of the Staff Judge Advocate before publication. In addition, before you express your military justice proposals or concerns publicly, consult fully with your legal advisor. In this way we can ensure the just disposition of each case on its own merits and preserve the integrity of the military justice system as a whole.

2. Reservation of Authority.

a. Offenses Committed by Officers and Senior Non-commissioned Officers. As the Commander and General Court-Martial Convening Authority for all soldiers assigned to the 4th Infantry Division (Mech), I hereby reserve the authority to make all decisions or recommendations, as appropriate, concerning adverse personnel actions affecting commissioned officers, warrant officers, and non-commissioned officers in the position of 1SG and above, assigned or attached for military justice purposes to the 4th Infantry Division (Mech). This includes, but is not limited to, non-judicial punishment pursuant to Article 15, UCMJ; general officer memoranda of reprimand (GOMORs); relief for cause; removal from promotion list; and administrative elimination. Brigade commanders will notify me of any allegations or investigations of misconduct involving officers and senior non-commissioned officers.

b. Domestic Violence Offenses. Domestic violence impacts on our soldiers' and family members' right to a safe and comfortable place to live. The authority to dispose of domestic violence incidents involving non-commissioned officers in the rank of Sergeant (SGT) through Master Sergeant (MSG) is reserved to battalion commanders. As with all potential disciplinary cases, battalion commanders must exercise independent discretion in handling domestic violence offenses and consider each offense on a case-by-case basis.

3. Driving While Intoxicated.

a. Driving While Intoxicated (DWI) poses a serious threat to the health, safety, discipline, and readiness of our soldiers and their families. Commanders at all levels must continue to focus their efforts on prevention of DWI, both on and off post. I, or my designee, will consider issuing a GOMOR for every soldier that commits a DWI offense.

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b. A DWI offense occurs when a soldier commits any of the following acts:

(1) Refusal to take or complete a lawfully requested chemical test to measure blood alcohol content when there is reasonable belief that the soldier is under the influence of alcohol or drugs; or

(2) Driving or being in physical control of a motor vehicle with a blood alcohol content of 0.08 percent by volume, or higher; or

(3) When other evidence, taken as a whole, indicates that a soldier was driving while intoxicated; or

(4) Violation of any state DWI statute.

c. Delegation of Authority. As the Commander and General Court-Martial Convening Authority for all soldiers assigned to the 4th Infantry Division (Mech), I hereby delegate the following authority:

(1) Except as noted in paragraph 2a, above, I hereby delegate to the Assistant Division Commander (Maneuver) (ADC(M)) and the Assistant Division Commander (Support) (ADC(S)) the authority to issue and make filing determinations pertaining to GOMORs for DWI offenses within the 4th Infantry Division (Mech). The ADC(M) or ADC(S) will consider issuing a GOMOR for each soldier who drives while intoxicated; however, they must exercise independent discretion in each case to include the discretion to not issue a GOMOR. This policy does not limit the authority of any subordinate commander to act upon the same incident, if the commander deems such action appropriate.

(2) Normally, the ADC(M) will act on all DWI cases, except those arising under the UCMJ jurisdiction of Commander, DISCOM. Normally, the ADC(S) will act on DWI cases arising under the UCMJ jurisdiction of the DISCOM. However, if either ADC is unavailable for an extended period, the other ADC has authority to act on DWI GOMORs for all 4th Infantry Division units.

d. I hereby delegate to the ADC(M) and the ADC(S) the authority to grant restricted POV driving privileges to 4th Infantry Division (Mech) soldiers, IAW AR 190-5, who have their privileges suspended or revoked.

e. I hereby delegate to the Deputy Staff Judge Advocate and attorneys assigned to the Administrative and Operational Law Division, Office of the Staff Judge Advocate, the authority to suspend or revoke the installation driving privileges of any 4th Infantry Division (Mech) soldier, IAW AR 190-5.

4. The Joint Ethics Regulation (JER). Public service is a public trust. Each soldier has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws, and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Army, all soldiers shall respect and adhere to the principles of ethical conduct set forth in the Joint Ethics Regulation. The Staff Judge Advocate, the Deputy Staff Judge Advocate, and the Chief, Administrative and Operational Law Division are the primary ethics counselors responsible for implementing and administering this command's ethics program and for providing ethics advice to 4th Infantry Division (Mech) personnel in accordance with the JER.

5. Health and Welfare Inspections.

a. Soldiers are the most important resource of the United States Army. Every soldier within this Division has the right to a safe, clean, comfortable place to live, where the conduct of other soldiers does not infringe upon this right. Every leader within this Division is charged with the responsibility to ensure

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that his or her soldiers live in a manner to enhance and preserve their security, readiness, fitness, efficiency, cleanliness, and overall physical and mental well-being.

b. To attain this high standard, I direct commanders at all levels to conduct inspections at least monthly of barracks and privately owned vehicles located on post to ensure the absence of contraband, drugs, alcohol, illegal weapons, excess military equipment, extremist material, unsanitary conditions, and other threats to the health and welfare of the soldiers of this Division. Leaders will coordinate with their respective trial counsel to ensure all inspections are conducted lawfully.

6. Article 138 Complaints.

a. Article 138 of the UCMJ provides for administrative review of a complaint of wrong made by soldiers against their commanding officer. This provision gives an important statutory right to our soldiers. Those commanders against whom a complaint is filed will dispose of the complaint with great care and urgency. Commanders who receive a request for redress or against whom an Article 138 complaint is submitted will obtain advice as soon as possible from the Staff Judge Advocate.

b. Article 138 uses a two-step procedure. A soldier who feels wronged must first seek redress, in writing, from the commanding officer believed to have committed the wrong. If the commander does not resolve the perceived wrong to the soldier's satisfaction, the soldier may file a formal written Article 138 complaint. This complaint must be routed through the chain of command to me, as the officer exercising general court-martial jurisdiction over the commander alleged to have committed the wrong. I have primary responsibility for acting upon Article 138 complaints. The Judge Advocate General, who takes final action on the complaint for the Secretary of the Army, reviews my action at Headquarters, Department of the Army.

“STEADFAST AND LOYAL”

//ORIGINAL SIGNED//

JAMES D. THURMAN
Major General, USA
Commanding

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